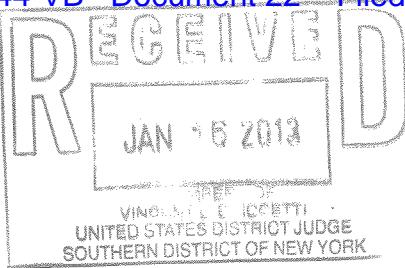


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January 16, 2013

Docket in case # CV/CR

As:

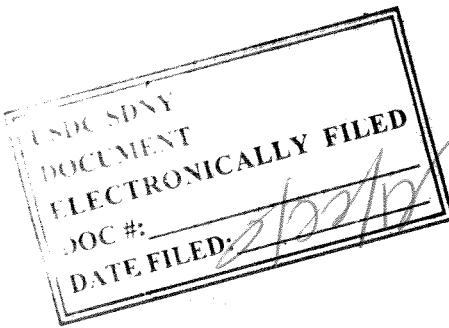
Date:

*Letter
 1/22/13*

VIA FACSIMILE (914) 390-4170

Hon. Vincent L. Briccetti
 U.S. District Court for the
 Southern District of New York
 300 Quarropas St.
 White Plains, NY 10601-4150

Re: Tiffany Ryan v. JPMorgan Chase & Co., et al.
Docket No. 12-cv-4844-VLB



Dear Judge Briccetti:

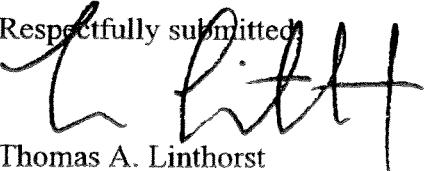
We represent Defendants in the above referenced case. In further support of their Motion to Dismiss, or in the Alternative, to Stay Action, and to Compel Arbitration (Dkt. No. 2), Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. hereby notify the Court of the January 7, 2013 decision by the U.S. Court of Appeals for the Eighth Circuit in *Owen v Bristol Care, Inc.*, No. 12-1719, --- F.3d ---, 2013 WL 57874 (8th Cir. Jan. 7, 2013), and the December 4, 2012 decision by the U.S. District Court for the Southern District of New York, *Cohen v. UBS Fin. Servs., Inc.*, No. 12-2147, 2012 WL 6041634 (S.D.N.Y. Dec. 4, 2012). In *Owen*, the Eighth Circuit compelled individual arbitration of a claim of overtime asserted in a putative collective action under the Fair Labor Standards Act (“FLSA”), enforcing a class action waiver in the arbitration agreement. In doing so, *Owen* became the first Circuit Court decision to address the impact of *In re: D.R. Horton*, 375 NLRB No. 184, 2012 WL 36274 (Jan. 3, 2012), upon a motion to compel arbitration involving a class waiver, and it refused to follow *D.R. Horton*, noting that “nearly all of the district courts to consider the decision have declined to follow it.” *Id.* at *3. The court also rejected the argument that class waivers are not enforceable in FLSA cases, noting that “our conclusion is consistent with all of the other courts of appeals that have considered this issue and concluded that arbitration agreements containing class waivers are enforceable in FLSA cases.” *Id.* at *4 (citing cases).

Similarly, the *Cohen* decision enforced an arbitration agreement with class waiver in a putative FLSA collective action, rejecting the arguments that (1) *D.R. Horton* precluded enforcement;

Morgan Lewis
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Hon. Vincent L. Briccetti
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(2) arbitration agreements containing class waivers are unenforceable in FLSA cases; and
(3) plaintiffs would be unable to vindicate their statutory rights in individual arbitration. *Cohen*,
2012 WL 6041634, at *4-6.

Respectfully submitted,

Thomas A. Linthorst

TAL/dpa
c: Donald L. Sapir, Esq. (via email)
Adam T. Klein, Esq. (via email)
Molly A. Brooks, Esq. (via email)